

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MALIBU MEDIA, LLC,)	
)	
Plaintiff,)	Civil Action Case No. 5:19-CV-00834-DAE
)	
v.)	
)	
JOHN DOE,)	
)	
Defendant.)	
_____)	

ORDER

The Court has fully considered John Doe’s Motion for Partial Reconsideration of Order on Cross-Motions for Summary Judgment (Dkt. 103). The Court finds good cause exists to grant the motion and revise its interlocutory order at Docket 97 (“Order”) under Fed. R. Civ. P. 54(b) as follows:

1. The Court has considered Doe’s objection under Fed. R. Civ. P. 56(c)(2) to Malibu Media’s use of the Fieser Declaration on summary (Dkt. 68 at 2). The Court will revise the Order to include a ruling sustaining Doe’s objection, as the Court finds the Fieser Declaration is inadmissible expert testimony under FRE 702 and Fed. R. Civ. P. 26(a)(2),

2. Because the Court will sustain Doe’s objection, the Court will revise the Order to find that Malibu Media has offered no competent summary judgment evidence to show a factual dispute over copying and substantial similarity, which are essential elements of copyright infringement. Thus, the Court will also revise the Order to grant Doe summary judgment on Malibu Media’s copyright infringement claim and Doe’s non-infringement counterclaim.

3. The Court will revise the Order to hold that a factual dispute over whether Malibu uses flawed IP address evidence and extortive settlement tactics can sustain Doe’s abuse of process

claim. The Court will also revise the Order as finding that Doe's summary judgment evidence shows genuine disputes of fact over these two issues, and as a result, the Court will revise the Order to deny Malibu Media summary judgment on Doe's abuse of process claim.

A revised order with revised findings and conclusions will follow.

SO ORDERED.

Dated:

Hon. David A. Ezra
United States District Judge